



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/933,540	08/20/2001	Robert Barritz	P / 1318-136	5806
2352	7590	09/20/2005	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			HA, THANH T	
			ART UNIT	PAPER NUMBER
			2194	

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/933,540

Applicant(s)

BARRITZ, ROBERT

Examiner

Ha Thanh

Art Unit

2194

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1-7 and 9-33.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

MEYER, T. L. AM.
SUPERVISORY PATENT EXAMINER
P.O. BOX CENTER 2007

Thanh Ha
Examiner
Art Unit: 2194

Continuation of 11. does NOT place the application in condition for allowance because: the rejection was deemed proper and applicant's arguments are not persuasive for the reasons set forth below.

1. Regarding applicant's remark that Lin does not teach or suggest elements of applicant's claim 1, including applicant's claim 1 monitor, filtering's facility and correlator. No description or structure is set forth anywhere in Lin's specification that would teach or suggest applicant's claim 1 "monitor" and "filtering facility" to one skilled in the art.

Lin clearly discloses a monitor (col. 4, lines 10-11, "program monitor maintains usage information relating to tasks and subtasks") to collect load module execution information (col. 4, lines 19-21 & col. 5, lines 38-41, "local record file may store ("collect") a variety of information concerning tasks and subtasks running under operating system", "the parent/child designation enable program monitor to continue tracking program usage information for a given application for as long as tasks spawned directly or indirectly by that application are running" ("execution information")).

Lin clearly discloses a filtering facility ("detecting step", "extracting an identifier") that is effective to filter known system programs from the load module execution information [col. 9, lines 49-53 & col. 10, lines 11-15] ("the operating system maintains a system task list identifying active tasks and subtasks, said detecting steps comprising interrogating the system task list and extracting an identifier for an active task or subtask").

Lin clearly discloses a correlator that correlates ("match") the filtered load module execution information with data that associates load module names with corresponding software products [col. 6, lines 1-3] ("by searching the application records in local record file for a record having a TaskID matching the task identifier in the callback message") and develops ("builds") a list of software products executed in ("builds a new task record in local record file using the appropriate TaskID and LaunchID").

2. With respect to applicant's remark that no separate facility is taught or suggested by Lin that collects load module execution information by a monitor and filters by a filtering facility at least one identified program from the load module execution information. Merely extracting identifiers from a list of active tasks is not tantamount to filtering programs from collected load module execution information, applicant is arguing a feature of the invention not specifically stated in the claim language, which is improper. Claim subject matter, not the specification, is the measure of invention. Limitations in the specification cannot be read into the claims for the purpose of avoiding the prior art. In re Self, 213 USPQ 1,5 (CCPA 1982); In re Priest, 199 USPQ 11,15 (CCPA 1987).